INDEX

TABLE OF AUTHORITIES

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The order of the Court of Appeals dated July 17, 1969 (A. 238), is unreported. The District Court's order dated June 19, 1969 (A. 194), embodies a discussion of the facts

and the court's conclusions of law; it has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 17, 1969. (A. 238) The petition for certiorari was filed on August 15, 1969, and granted November 10, 1969. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether it was permissible for the District Court here to enjoin proceedings in a state court, notwithstanding the anti-injunction provisions of Section 2283 of the Judicial Code, either (a) on the theory that by enjoining the pursuit of state court remedies, the District Court was "protecting or effectuating" its earlier judgment denying the state court plaintiff a Federal court injunction by reason of the Norris-LaGuardia Act's ban against Federal court injunctions in cases arising out of labor disputes, or (b) on the theory that Section 2283 is subject to implicit exception in cases where state law is allegedly preempted?

2. In the event that the lower Federal courts here, despite the provisions of Section 2283, had the power to enjoin proceedings in a state court looking toward an injunction against picketing if that picketing could be said to be protected under the rationale of this Court's decision in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), was the picketing presented here in fact so protected under that decision's rationale? And if so, should not that decision be reconsidered?

3. Whether the injunction granted by the District Court here against the state court proceedings was precluded by Section 4(d) of the Norris-LaGuardia Act, which prohibits the grant of injunctions against the support of litigation by "any person participating or interested in any labor dispute . . . in any court . . . of any State," or by Section 7 of that Act, which prohibits the grant of injunctions without the making of certain findings, not made here, in "any case involving or growing out of a labor dispute"?

STATUTES INVOLVED

This case primarily involves the application of the anti-injunction statute of the Judicial Code, 28 U.S.C. § 2283, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The case also involves the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, Sections 4, 7 and 13 of which are set forth as Appendix A to this brief, pp. 1a-5a, *infra.*

STATEMENT

This case is another in the series of cases before this Court related to the dispute between the Florida East Coast Railroad ("FEC") and the railway labor unions which have been on strike against it for close to seven years in some instances. Like two of the previous cases, it concerns the attempt of those unions to involve third parties in the dispute between the FEC and the unions. However,

the legal and factual issues involved in this case are very different from those in the two cases which have previously come before this Court concerning the attempt of those unions to involve third parties in their dispute with the FEC.[1]

In the first place, unlike those two previous cases, this case does not involve picketing of the Jacksonville Terminal Company facilities—facilities which are jointly owned by the FEC and the nonstruck carriers. This case involves union picketing and inducement of a "hot car" program solely at the Moncrief Yard, wholly-owned by the Seaboard Coast Line Railroad Company, a nonstruck carrier.[2] Despite the fact that in the two cases which have come before the Court, injunctive relief against the unions' picketing the jointly-owned Jacksonville Terminal facilities has been held unavailable, the unions have not sought to reinstitute

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[1] Those cases are *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), in which the Court affirmed by a four-to-four vote a judgment of the Court of Appeals for the Fifth Circuit, *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966), which by a two-to-one vote had held the Jacksonville Terminal Company, and two of the carriers using it, to be barred from obtaining an injunction against the picketing of the Terminal Company by reason of the Norris-LaGuardia Act; and *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), in which a state court injunction against picketing the Terminal properties, obtained by the Terminal Company, was reversed by this Court by a four-to-three vote.

Other cases involving the FEC dispute are cited in the *Jacksonville Terminal* opinion, 394 U.S., at 371.

[2] This suit was instituted prior to the merger of Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company and has continued to be prosecuted and defended in the name of the latter, to which we will continue generally to make reference, abbreviating it as "ACL." Because of this, some references to the premerger situation will be made in the present tense. Seaboard Coast Line Railroad Company, the successor by merger to ACL and present sole owner of Moncrief Yard, will sometimes be referred to herein as "SCL."

picketing at that terminal. Instead, they now seek to picket and disrupt activities at a major classification yard wholly-owned by one of the nonstruck carriers.

In the second place, this case does not primarily involve the question of the propriety of an injunction restraining secondary picketing, but directly involves the extraordinary action of a Federal District Court in enjoining proceedings in a state court in the face of the anti-injunction statute, Section 2283 of the Judicial Code, and of the Norris-LaGuardia Act.

Background.—In May, 1966, certain rail unions which had a dispute with the FEC threw a picket line around the premises of the Jacksonville Terminal Company in an effort to make the Terminal Company and the other railroads using its facilities stop doing business with the FEC. Suits for an injunction were filed successively in the Federal courts and the state courts; by two nonstruck carriers and the Terminal Company in the Federal court and by the Terminal Company in the state court. While the Federal Court injunction terminated in November, 1966, after this Court's four-to-four affirmance of the Fifth Circuit's judgment in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen,* 385 U.S. 20 (1966), the state court injunction remained in effect until this Court's decision in the spring of 1969 in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.,* 394 U.S. 369, which reversed it.

In 1967, while the state court injunction against picketing at the Jacksonville Terminal premises was in effect, the Brotherhood of Locomotive Engineers ("BLE") commenced picketing the Moncrief Yard, the major railroad yard of the ACL in Florida. The ACL and the Seaboard maintain extensive service to the central and western por-

tions of peninsular Florida on their own lines (now merged) and serve Miami via a line passing through Jacksonville. The FEC serves only the east coast of Florida, its line running solely between Jacksonville and Miami.

The Moncrief Yard.—Moncrief Yard is a major classification yard wholly owned by the Seaboard Coast Line Railroad Company, successor to the ACL. (A. 30, 49-50) Virtually all freight carried by ACL to and from peninsular Florida moves through the Yard. The principal ACL line through Jacksonville passes through the Moncrief Yard. (A. 51-52)

Moncrief Yard is located to the north of the Jacksonville Terminal premises. (A. 38) As was pointed out by this Court in its opinion in the *Jacksonville Terminal* case, the Jacksonville Terminal facilities were jointly owned and controlled; the FEC shared in their ownership and control. Switching services, signaling services, freight and passenger terminal services, and repair and maintenance services were furnished to the FEC by the Jacksonville Terminal Company. FEC employees reported for their daily work at the Jacksonville Terminal premises. 394 U.S., at 372-74, 389-90.

By contrast, Moncrief Yard is ACL's own. ACL does not provide FEC with switching, signal or terminal services at Moncrief (A. 46); ACL does not repair or maintain FEC cars or locomotives or provide any other miscellaneous services to FEC there (A. 47); and no FEC employees report to or depart from work at Moncrief Yard. (A. 46) While ACL and FEC each had a stock ownership in the Jacksonville Terminal Company, Moncrief Yard is in no sense a joint facility. It is wholly owned by the Seaboard Coast Line Railroad Company. There is no interlocking

stock ownership between ACL or SCL and FEC. The tracks and real property of FEC and the Moncrief Yard do not even adjoin or abut. (A. 39-40, 46, 47)

The primary function of Moncrief Yard is classification, that is, breaking down incoming trains and transferring the cars to the appropriate outgoing trains. The tracks which make up Moncrief Yard form one integrated operation. (A. 41) Moncrief Yard, at Jacksonville, is athwart the main line of ACL into peninsular Florida. (A. 51) Jacksonville is an essential link on SCL's rail system which unites the Middle Atlantic states with the Southeastern states, and, indeed, ACL's headquarters were, and SCL's headquarters are, in Jacksonville.

All ACL main line tracks into and out of Florida pass through Moncrief Yard. (A. 51-52) All of ACL's main line freight trains into or out of Florida are classified in the Yard. (A. 51, 55) Each day, nine road freight trains moving to and from the North and four or five road freight trains moving to and from the South are classified in Moncrief Yard. (A. 51) The vast majority of car movements within Moncrief Yard are from one ACL road train to another.[8] Because of the Yard's strategic function, the ACL cannot function without Moncrief Yard. (A. 51)

Besides being a major classification yard of the ACL, and an essential point in its own services to peninsular Florida, the Moncrief Yard is also a place in which interchange is effected between the FEC and the ACL. A track into Moncrief Yard is designated for the movement into the Yard by FEC of northbound traffic destined for ACL

[8] As an example, in December, 1966, 46,000 cars were handled through Moncrief Yard. Of these cars, 36,000 came into and went out of Moncrief Yard on ACL road trains. (A. 52)

and of southbound traffic delivered by ACL to FEC. Specified tracks within the Yard are designated for ACL-FEC interchange. (A. 34) FEC employees bring in northbound cars from the FEC lines, haul them across the intervening premises of the Jacksonville Terminal Company, place them on specified tracks in the Yard and then deliver the car documents to ACL. (A. 42-43, 47-48) It is significant to note that thereafter the car is "owned" by ACL, the movement is for the account of ACL, and ACL has the risk of loss or damage.[4] (A. 48) Likewise, southbound cars which are destined for the FEC are placed on certain designated tracks in the Yard by ACL employees, to be picked up by FEC employees and by them taken out of the Yard. (A. 48) Until the car documents are transferred by ACL to FEC, these cars are the "property" and under the control of ACL. (A. 47-48) Thus, the only work done by the ACL employees at Moncrief Yard on the cars which have originated on the FEC and been left in the Yard or which will be picked up by the FEC from the Yard is the ACL's own work.

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[4] Rule 7, Car Service Rules of the Association of American Railroads, Circular No. OT-10-B (revised 4/1/68). The Official Railway Equipment Register, ICC No. 373 (October 1969), provides in pertinent part:

> (A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.
>
> Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data for forwarding and to insure delivery. . . .
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> INTERPRETATIONS
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> Question: After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?
>
> Answer: Yes. (June 20, 1924).

The Picketing and the "Hot Car" Program.—The BLE commenced picketing Monorief Yard on Sunday, April 23, 1967. (A. 27) The picket signs were displayed most prominently at entrances to ACL employee parking areas. (A. 28, 92, 94; McRae Tr. 7-11, 51-53)[5] ACL employees were the only ones to use the parking areas.[6] The message of the signs, of the handbills then distributed, of word of mouth advice given to employees arriving for work, and aparently of phone calls made during the night to some of the employees, was that ACL employees should report for work but should refuse to perform services related to ACL cars which were eventually destined to or had originated on the FEC. (A. 27, 29, 31; McRae Tr. 14, 15, 52, 53) The picketing was thus addressed solely to ACL employees. The times and places of the picketing bore no relevance to the presence of FEC employees in the yard—those employees would be present in the yard only when they came in by rail as part of switching movements to pick up or to deliver cuts of cars. (A. 32, 103, 107, 110) The picketing and advice were given the ACL employees either at home or when they came to work, regardless of the presence of FEC employees. (A. 32)

The ACL employees followed the request of the BLE. The reaction of the ACL employees is significant. After the picketing began, the ACL switch crews assigned to move cars to and from tracks designed for placement of cars for interchange with FEC moved their switch engines into posi-

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[5] We refer to the unprinted portions of the transcript of hearing before Judge McRae in the District Court, April 25, 1967, as "McRae Tr." Unprinted portions of the transcript of hearing before Judge Luckie in the Florida Circuit Court, May 1, 1967, are referred to as "Luckie Tr."

[6] A typical sign said: "Unfair. ACL is helping the FEC scabs destroy our jobs. Do not handle FEC freight." (A. 92)

tion but then refused to perform their work in the normal course and stepped down from their engines. (A. 26-27, 28-29, 41, 43-44, 95-96, 97-98) Subsequently, as the ACL called other crew members to work, according to the procedures mandated by its labor contracts, the crew members would report directly to the offices of the supervisory personnel and state that they would not perform their ordinary services. (A. 30; McRae Tr. 20)

One ACL road crew refused to take a train out of Moncrief Yard north to Waycross, Georgia, even though at the time of refusal the train had already been made up and all of the component cars were under the total and legal control of the ACL, simply because the train contained certain cars which had originated on the FEC's line. (A. 101, 121-22)

Since cars destined for interchange onto the FEC's lines would be found at various places throughout virtually all incoming trains from the north, and since the employees would not handle these cars,[7] the result was an almost immediate blockage of operations in Moncrief Yard. (A. 38, 49, 56, 119, 120) While the Yard is a major one, the number of tracks in it is finite and indeed the Yard is already too small for the extensive functions performed in it. (A. 38, 44-45) Of course incoming cars can only be put

[7] Of course, the cars which were given this treatment by the employees were not simply cars which had "Florida East Coast" painted on them. As is well known, the railroads use one another's cars, and, particularly in the case of a smaller carrier like the FEC, the vast majority of the cars originating on its lines would be cars owned by another carrier. Rather, the cars so treated by the employees were, in the case of southbound movements, cars which had originated on the ACL or connecting carriers and which were destined for delivery to points on the FEC's lines, and, in the case of northbound movements, cars which originated on the FEC's lines and were destined for points on the ACL's lines or on the lines of ACL's connecting carriers to the north. (A. 28, 29, 31, 96)

on tracks. The natural result—blockage of the Yard when incoming cars are not moved—is obvious, and it occurred. (A. 38, 49) Moreover, not only did ACL employees fail to classify cars arriving on incoming southbound road trains, but since the employees would not touch FEC-originated cars which had been dropped off in the Yard for inclusion in the northbound road trains, there was likewise a blockage of the Yard from this cause, and a breakdown in operations in building up northbound trains. (A. 44-45, 48-50) The refusals to handle the cars were not restricted to those portions of the Yard where FEC interchange was effected. (A. 31, 34, 41, 43, 96, 97)

The picketing and "hot car" program disrupted a variety of major and important rail operations, not related to the FEC originated or destined cars. This was due to the physical blockage and disruption in the Yard and the fact that other cars could not be moved without touching the "hot cars." (A. 49, 98-99, 102, 120) Thus, the movement of thousands of rail cars destined to various points inside and outside Florida on the ACL's own lines was disrupted. Many of these movements involve Florida fruit and other perishables. (A. 51, 52) Interchange between ACL and the Seaboard Air Line Railroad Company was likewise disrupted. (A. 49, 50)—Despite the subsequent merger of these two companies, that disruption would occur today with respect to the physical interchange connection of cars which had been routed on the rail lines in question.—Also disrupted were interchange between ACL and the Southern Railway System, a major southeastern carrier whose principal Florida lines terminate on the south at Jacksonville, and the switching and delivery of cars by ACL to industrial sites in metropolitan Jacksonville. (A. 49, 50) None of these operations just mentioned has anything to do with the FEC.

The picketing was directed solely at ACL employees who were performing duties for their own employer in relationship to rail cars "owned" by their employer and under that employer's sole control. (McRae Tr. 96) The avowed purpose was to close down Moncrief Yard. (A. 31) Until enjoined, it had seriously blocked the Yard. (A. 38, 49, 56, 119, 120) And, due not only to numerous practical problems but also to serious safety hazards, the result of closing down the Yard could not be avoided by the railroad's use of supervisory personnel. (A. 49, 130; McRae Tr. 87-90)

The Federal Court Action.—The complaint in the present action was filed in the United States District Court for the Middle District of Florida by ACL against BLE on April 25, 1967. (A. 7-24) The only relief prayed for was an injunction against the picketing; damages were not sought. The ACL brought on a prayer for a temporary injunction that day, which the District Court the next day, April 26, 1967, denied on the basis of the 1966 ruling of the Fifth Circuit[8]—affirmed by an equal division in this Court—in the case involving the Jacksonville Terminal, to the effect that the Norris-LaGuardia

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[8] With one exception, each of the case authorities cited by the District Court in its conclusions of law itself turned on the Norris-LaGuardia Act. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast R. Co.*, 346 F.2d 673, 675 (5th Cir. 1965); *Chicago & I.M.R. Co.* v. *Brotherhood of Railroad Trainmen*, 315 F.2d 771, 777-78 (7th Cir. 1963), *vacated as moot*, 375 U.S. 18 (1963) (dissenting opinion of Swygert, *J.*, relied upon by the District Court); *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649, 653-55 (5th Cir. 1966), *aff'd by an equally divided court*, 385 U.S. 20 (1966). The exception is *Brotherhood of Locomotive Engineers* v. *Baltimore & O. R. Co.*, 372 U.S. 284 (1963), a *per curiam* decision holding simply that where the primary parties to a railway labor dispute have exhausted the procedures of the Railway Labor Act, they are entitled to use self-help against each other. See pp. 38-39, *infra*.

Act prevented the issuance of an injunction by a Federal court.[9] (A. 64-68) At the request of the attorneys for the ACL, the summonses with complaint attached which had been issued for service upon the defendants were then not served, and the Federal court case lay completely dormant for over two years. No answer or counterclaim was filed by the BLE during that period.

The State Court Action.—The next day after the denial of the Federal court injunction, April 27, 1967, the ACL filed an action in a state court, the Circuit Court for Duval County, Florida, against the picketing of Moncrief Yard based solely upon state law, namely, the Florida Transportation Act, the Florida Restraint of Trade Law, and the Florida Labor Relations Law. An extensive hearing ensued at which considerable evidence and testimony was received, and the state court entered a temporary injunction on May 3, 1967. (A. 144-51) The BLE made no efforts to have this order reviewed or set aside for two years. However, on three occasions—one immediately after the filing of the complaint, one after the entry of the temporary injunction, and one in May, 1969—the BLE removed the suit to Federal court; but on each occasion ACL's motion to remand was granted on the ground that the District Court did not have original jurisdiction of the action under Sections 1331 and 1337 of the Judicial Code, since the action was brought solely under Florida law.[10]

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[9] The district judge was the same district judge who had originally enjoined the picketing at the Jacksonville Terminal properties in 1966, only to be reversed by the Court of Appeals in the case mentioned solely on the basis of the Norris-LaGuardia Act.

[10] The three removal cases, in each of which a motion to remand was granted, are all in the United States District Court for the Middle District of Florida, and are Case No. 67-338-Civ.-J, filed April 27, 1967, and remanded the same day; Case No. 67-418-

In April, 1969, the BLE made application to the Circuit Court for Duval County to dissolve the injunction granted on May 3, 1967, on the grounds that this Court's decision of March 25, 1969, in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, precluded the application of state law and the grant of a state court injunction against the picketing presented by the case. (A. 158-60) ACL opposed the application, urging before the Florida Circuit Court that this Court's decision was clearly distinguishable and inapplicable to this case of picketing of a facility solely owned by a carrier not a party to the primary FEC labor dispute, a facility where none of the extensive services recited in this Court's opinion in the *Jacksonville Terminal* case (394 U.S., at 372-74, 389-90) were furnished to the FEC.[11]

Immediately after oral argument before the Florida Circuit Court on May 23, 1969, the BLE (a) made the third of its three unsuccessful attempts to remove the suit pending before the Florida Circuit Court to the Federal District Court, and (b) filed a handwritten answer in the Federal court proceeding which had been dormant for the two years after the denial of the ACL's application for a temporary injunction. (A. 163-67, 168-71)

The Florida Circuit Court in a letter opinion rendered on June 3, 1969, viewed the picketing at Moncrief Yard as factually and legally distinguishable from that at the Jacksonville Terminal and declined to dissolve the in-

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Civ.-J, filed May 23, 1967, and remanded July 6, 1967; and Case No. 69-351-Civ.-J, filed May 23, 1969, and remanded May 28, 1969. See A. 69-74, 152-57, 168-75.

[11] See Transcript of Proceedings before Honorable Charles A. Luckie, May 29, 1969, pp. 34-46 (hereinafter "Luckie 1969 Tr."); A. 177-80.

junction it had issued on May 3, 1967. (A. 181-82) At the hearing in the Florida Circuit Court, the BLE had requested that the injunction be made permanent, if not dissolved by the court (which would remove any doubt as to its appealability under Florida law), and ACL did not object. (Luckie 1969 Tr. 55) The Florida Circuit Court's letter opinion indicated that the request of counsel for the BLE was granted and that counsel for the BLE could proceed to have a final judgment entered.[12]

The Federal Court Injunction Against the State Court Proceeding.—The BLE did not pursue any steps in the Florida courts to obtain a review of the state court injunction or of the Circuit Court's action in refusing to dissolve it, notwithstanding the full availability of appellate remedies in the Florida state courts. Instead, the BLE the next day filed in the dormant Federal court proceeding in which it was the defendant a motion for preliminary injunction against the ACL's availing itself of the state court injunction.[13] (A. 183-86)

On June 19, 1969, the District Court denied a motion by the ACL to dismiss its complaint.[14] Over the objections of ACL, based on the anti-injunction statute (Section 2283

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[12] Through the time of the printing of this Brief in late December, 1969, counsel for BLE had not yet caused final judgment to be entered.

[13] The injunction requested and granted was one "pending final hearing and determination of this action." The content of this term is hard to make out, since the BLE as defendant was not praying for any permanent relief in the matter and ACL at this point was seeking to effect a voluntary dismissal of its complaint, which voluntary dismissal it stated on the record before the District Court might be with prejudice. The BLE resisted the voluntary dismissal, with or without prejudice, of ACL's complaint.

[14] It was held that the filing of the handwritten answer by BLE, after the case had lain dormant for two years, had taken away ACL's right to a voluntary dismissal. See A. 194.

of the Judicial Code) and the Norris-LaGuardia Act, the District Court granted the BLE's motion for an injunction against the state court proceedings. (A. 194-96)

On June 26, 1969, ACL took an appeal to the Court of Appeals for the Fifth Circuit under 28 U.S.C. § 1292(a)(1), and sought a stay of the District Court's order pending consideration by the Court of Appeals of the appeal from the order granting the preliminary injunction against the state court proceedings. (A. 210-23) After denial by a single judge (A. 224-25), the application for a stay pending appeal was renewed and submitted to a three-judge panel of the Court of Appeals, consisting of Circuit Judges Bell, Ainsworth and Godbold. On July 7, 1969, the panel denied the stay application, citing as authority this Court's decision in the *Jacksonville Terminal* case, which did not, of course, involve Section 2283 of the Judicial Code (having arisen on certiorari to the state courts) but simply involved the question whether the state courts could enjoin picketing by the railroad brotherhoods at the Jacksonville Terminal properties. However, the panel "in view of the importance of the case" granted a ten-day temporary stay through July 17, 1969, to permit the ACL to pursue other remedies. (A. 226-27)

In response to this suggestion by the Court of Appeals, ACL then filed a motion in which it waived its rights to further briefing and oral argument and consented to and requested the final disposition of the case on the merits on the basis of the record filed and the briefs already submitted, within the ten-day period provided for by the Court's order.[15] (A. 228-29) The purpose of ACL's mo-

[15] In connection with the stay application to the Court of Appeals, the parties had already filed briefs aggregating 45 pages which had extensively discussed the merits of the appeal.

tion was to consent, procedurally, to the entry of a judgment without further briefing in the Court of Appeals affirming the District Court so that ACL might petition this Court for certiorari and apply for a stay pending certiorari.

The Court of Appeals on July 11, 1969, at first refused without explanation to enter a judgment on the merits.[16] (A. 232) ACL proceeded to make application to Mr. Justice Black on July 15, 1969, for a stay of the District Court's injunction pending review by this Court of the judgment finally to be entered by the Court of Appeals upon the appeal to it. Mr. Justice Black granted the stay application on July 16, 1969. His order imposed a duty on ACL "to expedite all actions necessary to present its petition for certiorari here."

Meanwhile, ACL had filed a petition for rehearing with the Court of Appeals with respect to the order of the Court of Appeals denying an expedited hearing and denying expedited determination of the appeal on its merits. (A. 233-36) On July 16, 1969, the Court of Appeals requested BLE to respond to this petition, and shortly thereafter the parties filed a stipulation with the Court of Appeals that that court might enter a judgment affirming the District Court's order, in the light of its indications as to its views of the substantive law expressed in its order denying the stay application. This stipulation was without prejudice to ACL's rights to further judicial review. (A. 237) On July 17, 1969, the Court of Appeals affirmed the judgment of the District Court, again citing only this Court's decision in the *Jacksonville Terminal* case. (A. 238-39) This Court granted certiorari on ACL's petition on November 10, 1969.

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[16] The court also then denied a requested stay pending certiorari. (A. 232)

SUMMARY OF ARGUMENT

I. The District Court's injunction here violated Section 2283 of the Judicial Code. A. That provision forbids the lower Federal courts to adjudicate Federal preemption defenses by way of injunctions against proceedings in the state courts. Section 2283, the anti-injunction statute, is the current version of a provision that has been on the books since 1793. Its purpose is to minimize collision between the Federal and state courts by confining Federal court review of state court proceedings to this Court's review of judgments rendered in the highest available court of a state. The anti-injunction statute was last revised in 1948, but nothing in the revision indicates any alteration in the statute's basic philosophy, and the subsequent decisions of this Court confirm that.

In *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 348 U.S. 511 (1955), this Court held that Section 2283 barred Federal court enforcement of a preemption defense by way of an injunction against a suit in a state court in a labor case, even though preemption there was clear as a matter of substance, and even though by reason of the Federal preemption the state court there was without jurisdiction. The Court in *Richman Brothers* made it plain that the strong congressional policy exemplified in Section 2283 precluded enjoining a state court proceeding even under those circumstances.

Richman Brothers is completely controlling here. The respondents are simply seeking to adjudicate a Federal preemption defense to the Florida state court litigation through an injunction proceeding in the Federal court. Indeed, this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers* because

Brotherhood of Railroad Trainmen v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), the case relied upon by respondents for their substantive assertions as to preemption, unlike the decisions rendered in the context of the Labor-Management Relations Act, repeatedly held that the Florida courts "are not pre-empted of jurisdiction over this cause" which involves a railway labor controversy.

Despite the respondents' contentions, applicability of the *Richman Brothers* case does not turn on the question whether the Federal court had jurisdiction in the first place, nor does the applicability of Section 2283 depend on whether the state court proceedings commenced before or after the Federal court case.

B. This case is not within any of the statutory exceptions to the prohibitions of Section 2283. The respondents contend that the injunction here was justified by the exceptions in that section which permit the injunction of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments." These exceptions were meant to deal with cases removed from the state courts, with cases involving a "res" over which only one court could take jurisdiction, and with the situation of an attempted relitigation of a suit which had been completely determined by a Federal court on the merits.

This case presents none of these situations. Neither are the statutory exceptions applicable in terms. The only ruling of the Federal court in the suit filed by ACL was that, by reason of the Norris-LaGuardia Act, ACL was not entitled to a preliminary injunction. That the District Court held that it was without power to grant an injunction to ACL by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar

injunction sought before the state courts in order to aid its jurisdiction or to protect or effectuate its judgment. After the District Court had declined to issue an injunction under Federal law, it did not affront its jurisdiction for a state court to exercise its jurisdiction; nor does any such exercise in any way interfere with any judgment of the District Court.

The respondents have contended that the District Court's order of April 26, 1967, constituted a full and complete determination of the legal rights of the parties with respect to the picketing at Moncrief Yard. This assertion does not change the result. In the first place, it clearly overstates the effect of that order. Examination of the order and of the authorities cited in it makes it plain that the real basis of the order was the Norris-LaGuardia Act's bar on Federal injunctive remedies. However, even if the District Court's order did constitute an adjudication of substantive rights, it would not change the matter.

First, an order granting or denying a preliminary injunction is not an adjudication on the merits. In the second place, the order did not adjudicate rights under state law. The complaint in the District Court filed by ACL was based solely on Federal law. The District Court could not and did not purport to adjudicate any of the rights and duties of the parties under state law. Thus, the case is not one of a relitigation of a claim as to which there can be but a single governing law.—To be sure, the BLE takes the position that Federal law precludes or preempts enforcement of state-created rights against the picketing here in the state courts, but that is simply to argue that the District Court was free to adjudicate a Federal preemption defense through injunctive proceedings. As demonstrated in part A, that is what the decisions of this Court teach may not be done.

C. Even if adjudication of a preemption defense by way of injunction against the state court proceedings were on some basis deemed to be within the competence of the District Court, the state court's distinction of the *Jacksonville Terminal* case was well taken and its action should not have been enjoined by the District Court.

We do not know whether respondents are simply suggesting that the state courts may be enjoined where preemption is clear and not "arguable," or whether they are contending for plenary review of the state court decision in the injunction proceedings in the Federal District Court. But on either basis, the action of the state courts here was proper. This case, involving the picketing at the Moncrief Yard, a facility wholly owned and operated by the ACL, a neutral carrier, does not involve any of the specific factors of common use and ownership, and of the performance of services for the struck employer, found to exist by this Court at the Jacksonville Terminal. The Yard performs no services for the FEC. Its primary purpose is the classification of ACL rail traffic. The only relationship the Yard has with the FEC is interchange through "pick-up and delivery." The picketing here was not restricted in time or place to the points of interchange nor to the times when interchange was being effected. Rather, it was aimed solely at ACL employees, designed to keep them from handling cars which had originated on or were destined for the FEC—a "hot car" type of picketing. We submit that an intelligible distinction, based on the area in which self-help weapons may be used, can and should thus be drawn between this case and that of the picketing at the Jacksonville Terminal.

D. However, if the Court reaches the question whether *Jacksonville Terminal* is applicable here, and concludes that it is, that decision should be reconsidered and over-

ruled. The decision was candidly conceded not to amount to a "really satisfactory judicial solution to the problem at hand." We submit it is among the least satisfactory of the possible solutions. It ousts the application of state law in circumstances lacking the conventional hallmarks of supersession of state law—a federal statute governing the specific subject matter, or a federal administrative regulatory regime whose functioning must be protected, or even the existence of a body of federal common law (the court in *Jacksonville Terminal* declined to create any).

Thus, unlike the situation under the Labor Management Relations Act, the availability of state remedies in this Railway Labor Act context would not interfere with any federal administrative regime. There is no federal administrative agency having jurisdiction. Nor is there any specific federal sanction in the statute here for any specific means of self-help, let alone the secondary means adopted here. Indeed, the general policy of Congress has been quite the other way—in the direction of progressive curbing of the secondary boycott in American industry. There is no reason to assume that Congress wanted railway labor to have, on a unique basis, the power to use economic weapons against neutrals in a manner in which American labor generally could not.

The danger of inconsistent state regulation has not been considered a primary factor in the past in determining the permissibility of the application of state law to interstate commerce. In any event here the possibility of inconsistent regulation is theoretical, rather than practical. Finally, if there is inconsistency in practice, Congress can always act.

The *Jacksonville Terminal* decision creates a unique regulatory gap. Under it, no tribunal, federal or state,

judicial or administrative, may regulate the use of economic weapons by rail unions against innocent third parties. And this gap exists despite the fact that the consistent course of federal and state legislation has been against such secondary use of economic weapons. Accordingly, if the court reaches the point, which we contend it need not, we would urge that the *Jacksonville Terminal* decision be overruled.

II. The District Court's injunction also violated the Norris-LaGuardia Act. The District Court held, in denying ACL's Federal injunctive remedies against the picketing, that this case was one "arising out of a labor dispute" and hence within the Norris-LaGuardia Act. Accordingly, Section 4(d) of the Act, which absolutely prohibits injunctions against persons "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State" is applicable to bar the injunction against state court proceedings. Similarly applicable is Section 7, an independent prohibition which bars all federal injunctions in labor disputes absent the making of certain findings, not made here.

The basic position of the respondents is apparently that the Norris-LaGuardia Act does not apply at all to injunctions against management. The text of the Act does not support any such conclusion. In passing on injunctions against management in labor disputes, this Court has never enunciated any such proposition. The legislative history is clear that the statute was a "two-way street" and that the basic purpose of the statute was a neutral purpose—to take the Federal courts out of the business of granting injunctions in labor cases. The better-considered lower Federal court decisions support this position.

ARGUMENT

I. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED SECTION 2283 OF THE JUDICIAL CODE

A. *Section 2283 Forbids the Lower Federal Courts from Adjudicating Federal "Preemption" Defenses by way of an Injunction against Proceedings in the State Courts*

In this case, the action of the District Court in enjoining proceedings in the Florida state courts[1] amounted to a flat violation of the anti-injunction statute, Section 2283 of the Judicial Code, and the established law as developed under it.

Section 2283 provides that: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Section 2283 is the current form of a statutory provision that has been law since 1793.[2] The basic purpose

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[1] While the injunction in form is simply one against ACL's availing itself of the benefit of the proceedings before the state court, such an injunction has uniformly been treated as tantamount to an injunction against proceedings in a state court for purposes of the Federal anti-injunction statute. See, *e.g.*, *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940); *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 348 U.S. 511 (1955); *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320, 330-31 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969). *Cf. Donovan* v. *Dallas*, 377 U.S. 408, 413 (1964).

[2] In the Act of March 2, 1793, c. 22, § 5, 1 Stat. 334, Congress sharply limited the power of the Federal courts by providing that "no . . . writ of injunction [shall] be granted to stay proceedings in any court of the state. . . ." This provision became, without substantial change, § 720 of the Revised Statutes, Rev. Stat. § 720

of this statutory prohibition was to minimize instances of collision between the Federal and the state courts. This Court has said that the statute expresses "an important congressional policy—to prevent needless friction between state and federal courts." *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940). As this Court put the philosophy of the statute in *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118, 141 (1941):

> "The guiding consideration in the enforcement of the Congressional policy was expressed by Mr. Justice Campbell, for the Court, in *Taylor* v. *Carryl*, 20 How. 583, 597:
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> "'The legislation of Congress, in organizing the judicial powers of the United States, exhibits much circumspection in avoiding occasions for placing the tribunals of the States and of the Union in any collision.'"

The statute mirrors the early commitment of the first Judiciary Act (Act of September 24, 1789, § 25, 1 Stat. 73), which vested appellate jurisdiction in this Court in cases involving Federal issues, to review judgments or decrees "in the highest court of law or equity of a state in which a decision in the suit could be had." This Court sits in judgment to review state court decisions; the lower Federal courts do not. *Cf. Byrne* v. *Karalexis*, No. ——, O.T. 1969, decided December 15, 1969, and separate opinions of Mr. Justice Black and Mr. Justice Stewart, slip op., pp. 6-7,

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(1875), and later § 265 of the Judicial Code of 1911, Act of March 3, 1911, c. 231, § 265, 36 Stat. 1162.

Professor Charles Warren indicates that the 1793 Act is a significant illustration of the strong apprehension early felt by Congress of an encroachment by Federal courts on state court jurisdiction. See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345, 347-48 (1930).

with respect to the reluctance of this Court to permit the lower Federal courts to enjoin pending state criminal proceedings.

Section 2283 is thus "as old as the judicial system of the United States." *Hemsley* v. *Myers,* 45 Fed. 283, 289 (C.C.D. Kan. 1891). It reflects a long standing Congressional decision—virtually as old as the Constitution—that the state courts are to be trusted to administer defenses based on Federal law, subject to review by this Court when the case has been adjudicated by the highest available state court. "If a state court proceeds as the Chancery Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court." *Southern R. Co.* v. *Painter,* 314 U.S. 155, 159-60 (1941). "As part of the delicate adjustments required by our federalism, Congress has rigorously controlled the 'inferior [Federal] courts' in their relation to the courts of the states." *Toucey* v. *New York Life Ins. Co., supra,* 314 U.S., at 141.[3] See also *Stevens* v. *Frick,* 372 F.2d 378 (2d Cir.

[3] The basic philosophy of the anti-injunction statute, taken with the provisions for direct review in this Court of the judgments rendered by the highest available state court, was eloquently put by Circuit Judge (later Mr. Justice) Lurton in *Aultman & Taylor Co.* v. *Brumfield,* 102 Fed. 7, 15 (C.C.N.D. Ohio 1900):

> "The remedy of a defendant in a suit in which the decision must turn upon the construction or application of the constitution of the United States, where the federal question is not disclosed by the plaintiff's statement of the case, is to present the question by his pleadings, and, if the right thus set up under the constitution or laws of the United States is denied to him by the highest court of the state to which the controversy can be carried, he may sue out a writ of error from the supreme court of the United States, and thus obtain a review of the decision of the state court upon the federal question directly involved. It would be strange, indeed, if a defendant to an action in a state court, whose defense involved the construction and application of the constitution of the United States, but who could not remove the suit because the federal question did not appear upon the face of

1967), *cert. denied*, 387 U.S. 920 (1967); *Nongard* v. *Burlington County Bridge Comm'n*, 229 F.2d 622 (3d Cir. 1956); *Collins* v. *Laclede Gas Co.*, 237 F.2d 633 (8th Cir. 1956).

The anti-injunction statute has been changed in form in minor details on various occasions in the 176 years in which it has been on the books, and various express exceptions have been written into it. Its present form is the product of the revision of the Judicial Code in 1948.[4] But the basic purpose of the statute has remained the same. This Court has continued to describe the purpose of the anti-injunction statute in the same terms as before the 1948 revision: "The prohibition of § 2283 is but continuing evidence of confidence in the state courts, reenforced by a desire to avoid direct conflicts between the state and federal courts." *Amalgamated Clothing Work-*

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the plaintiff's statement of his claim, should have the right to transfer the case to a court of the United States by an independent injunction bill, whereby the state court should be deprived of jurisdiction, and the decision of the same question drawn into the United States court. The provisions for a review by writ of error afford to the complainant ample means for obtaining redress, if in fact it has been subjected to the deprivation of rights secured to it by the provisions of the [federal constitution]. . . ."

[4] The 1948 revision was somewhat more extensive than the preceding ones. In *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118 (1941), § 265, the predecessor of § 2283, of the Judicial Code had been very strictly interpreted by this Court in an opinion by Justice Frankfurter, as forbidding an injunction even where sought to prevent relitigation of a case fully tried in federal court under the single applicable law. Neither § 2283, passed subsequent to the *Toucey* decision, nor the Reviser's Note to that section—which indicated that the revision overruled *Toucey* on its facts (n. 4, p. 34, *infra*)—indicates Congressional intent to provide Federal district courts with appellate power over state court systems, and this is, of course, confirmed by this Court's subsequent decision in *Richman Brothers*, discussed below. For a further discussion of the effect of the 1948 revision, see pp. 33-34, *infra*.

ers v. *Richman Brothers Co.*, 348 U.S. 511, 518 (1955); see also *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 225 (1957).

Richman Brothers is both the leading case in this Court construing the present version of the anti-injunction statute and the leading authority on the effect that that statute has on any attempt to use the lower Federal courts as a vehicle for the adjudication of a Federal labor "preemption" defense to suits pending in the state courts. In *Richman Brothers*, it was held that a Federal district court was without power to enjoin enforcement of a state court injunction against certain labor union practices, despite the fact that under the substantive law as established by decisions of this Court,[8] the jurisdiction of the state court was clearly preempted by that of the National Labor Relations Board under the Labor-Management Relations Act. The Court in *Richman Brothers* held that in Section 2283 Congress had made it clear that injunctive remedies in the lower Federal courts against state court proceedings were not to be substituted for the normal, orderly processes of state court appellate review and this Court's reviewing jurisdiction over the state courts by certiorari and appeal.

The Court in *Richman Brothers* also made it plain that an exception was *not* to be engrafted upon Section 2283 "whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.'" 348 U.S., at 515. The Court stated:

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[8] The principal such case being *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), a case decided only one week before the decision in *Richman Brothers*, and acknowledged by the Court in *Richman Brothers* to be controlling on the merits. 348 U.S., at 512, 514.

> "[W]e cannot accept the argument of petitioner and the [National Labor Relations] Board, as *amicus curiae*, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265 [the predecessor of § 2283, see n. 2, pp. 24-25, *supra*]. In any event, Congress has left no justification for its recognition now." 348 U.S., at 515.[6]

In short, the teaching of *Richman Brothers* is that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor matters is claimed.—The effects of a contrary decision are obvious. If the lower Federal courts could adjudicate the Federal preemption defense through proceedings to enjoin state court litigation, state court judgments would be reviewed before they were ripe for review—before the state courts had finally dealt with the case to the best of their ability—and they would be reviewed in a nonuniform way, by the ninety Federal district courts in the country. "Misapplication of this Court's opinions is not confined to the state courts . . . ." *Richman Brothers, supra,* 348 U.S., at 519. Federal district courts can differ with respect to the meaning of this Court's opinions, just as state courts can. It is not impossible that district judges in different districts within a state might take varying views of the extent of a Federal preemption defense provided by this Court's de-

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[6] The case law before the 1948 revision indicated that an injunction against proceedings in the state court was barred even where it was alleged that the state court was without jurisdiction. See *Puget Sound Power & Light Co.* v. *Asia,* 2 F.2d 485, 491 (W.D. Wash. 1921).

cisions, and state court proceedings in various localities in a single state might be enjoined or permitted to continue depending on the views of the Federal district court involved.

This case is governed in all respects by *Richman Brothers*.[7] In essence, what the BLE is seeking to do here is to use the lower Federal courts to adjudicate a preemption defense—based upon the BLE's reading of this Court's opinion in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969)—to a proceeding pending in the Florida state courts. This is what *Richman Brothers* holds may not be done.

Indeed, it appears that this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers*. In *Richman Brothers* it had been established that the state courts had no jurisdiction to grant their injunction against the picketing; yet this Court nonetheless held that a Federal court injunction against the state court's assuming jurisdiction was barred by Section 2283. 348 U.S., at 512, 520-21. That situation involved the Labor Management Relations Act. Here, the decision of this Court in the railway labor context which is relied upon by the BLE in order to assert that the state court injunction against the picketing was erroneous repeatedly held that "the Florida courts are not pre-empted of jurisdic-

[7] Until the case at bar, the courts of appeals had been consistent in following the teaching of this Court that § 2283 prohibits enforcement of a Federal preemption defense, whether or not meritorious, by injunction against state court proceedings. *International Association of Machinists* v. *United Aircraft Corp.*, 333 F.2d 367 (2d Cir. 1964), *cert. denied*, 379 U.S. 946 (1964); *German* v. *South Carolina State Ports Authority*, 295 F.2d 491 (4th Cir. 1961); *NLRB* v. *Swift & Co.*, 233 F.2d 226 (8th Cir. 1956); *T. Smith & Son* v. *Williams*, 275 F.2d 397 (5th Cir. 1960). See also *Williamson* v. *Puerifoy*, 316 F.2d 774, 775 (5th Cir. 1963), *cert. denied* 375 U.S. 967 (1964).

tion over this cause." *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 390 (1969); *id.*, at 375-77.

The respondents have occasionally seized on certain language in *Richman Brothers* (see 348 U.S., at 519) to seek to explain that decision as turning on a lack of jurisdiction in the Federal court. The District Court likewise seems to have taken this view (A. 195), namely, that the meaning of Section 2283 was that wherever the District Court had jurisdiction apart from Section 2283, it could proceed to enter an injunction against state court proceedings, or, put conversely, that *Richman Brothers* held only that a district court may not enjoin proceedings in a state court where the district court had no jurisdiction itself. If this were what Section 2283 meant, it would be essentially meaningless. On its face, Section 2283 is a prohibition against the granting of injunctions in cases otherwise within the jurisdiction of the district court. The provision would hardly be necessary if its only purpose was to prevent the district courts from issuing injunctions in cases where they had no jurisdiction.

Another suggestion that the respondents have made is that the Federal court may enjoin the state court proceeding because the Federal court proceeding was commenced first. (Br. Op., p. 17) The decisions of this Court, however, have rejected any implied exception to the anti-injunction statute based on the fact that the Federal court proceeding was commenced first. See *Kline* v. *Burke Construction Co.*, 260 U.S. 226 (1922); *Southern R. Co.* v. *Painter*, 314 U.S. 155 (1941).[8]

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[8] The above decisions enunciate the rule where, as here, the suits are actions *in personam*. The rule is otherwise where the Federal court first obtains possession of a *res*. See *Kline* v. *Burke Construction Co.*, *supra*, 260 U.S., at 235. See also n. 3, p. 33, *infra*.

It is not without importance to note that this case furnishes a vivid example of the consequences of Federal district courts undertaking to sit as appellate tribunals to review state court proceedings. Despite the fact that, at the request of the BLE and the other respondents, the Florida circuit judge indicated a willingness to have a final judgment entered upon application, so that an appeal could be taken to the Florida appellate courts, the BLE has taken no steps whatsoever, in the more than six months since the rendition of the circuit court's June 3, 1969, letter opinion, to have judgment entered and to pursue its appellate remedies guaranteed under Florida law. Instead of following this orderly procedure, this case has been adjudicated in the Federal courts by way of litigation through injunction proceedings of the validity of the preemption defense, and has occupied the attention of 15 Federal judges in this Court and the lower courts. Whether much time will be saved in the long run over what would have been the case had the normal appellate remedies in Florida, and review by this Court, if necessary, been pursued is highly conjectural. This example of the practical consequences of the BLE's course of action underscores the policy behind the anti-injunction statute.

B. *This Case Is Not Within Any of the Statutory Exceptions to the Prohibitions of Section 2283*

It is the position of the respondents that the injunction here was justified by the second and third exceptions in Section 2283 which permit the injunction of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."[1]

[1] The first exception, adapted from the pre-1948 version of the statute, permits an injunction to issue "as expressly authorized by

This Court has pointed out that these exceptions are restricted to "special circumstances." *Donovan* v. *Dallas*, 377 U.S. 408, 412 (1964). The authorities indicate that the purpose of the exception for injunctions "necessary in aid of its jurisdiction" was to "make clear the recognized power of the Federal courts to stay proceedings in state cases removed to the district courts"[2] (see Reviser's Note to Section 2283, n. 4, p. 34, *infra*) and to apply in the situation of a "res" over which only one court could take jurisdiction. See, *e.g.*, *Hyde Construction Co.* v. *Koehring Co.*, 388 F.2d 501, 509 (10th Cir. 1968), *cert. denied*, 391 U.S. 905 (1968). See also *Donovan* v. *Dallas*, 377 U.S. 408, 412 (1964).[3] The exception for injunctions necessary to "protect or effectuate" Federal court judgments was inserted to permit the Federal courts to enjoin the relitigation, in state courts, of controversies fully adjudicated by the

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Act of Congress." There is no such Act of Congress here, and BLE has never relied on this ground of exception. For reasons similar to those discussed in *Richman Brothers*, 348 U.S., at 516-19, the general terms of the Railway Labor Act do not constitute any "express" authorization.

[2] As originally proposed in 1945, the revision to § 2283 was similar to the form finally enacted, except that it did not contain the third, or the "protect or effectuate its judgments," exception. The second exception, "where necessary in aid of its jurisdiction," was explained by the form of the Reviser's Note which appeared in the preliminary draft of 1945 as "added to conform to Section 1652 of this title [§ 1651, the "All Writs Act," in the form finally enacted] and to make clear the recognized power of the federal courts to stay proceedings in state cases removed to the district courts." House Committee on Revision of the Laws, Revision of Federal Judicial Code, Preliminary Draft (Committee Print 1945), Note to § 2284. The removal exception had been recognized in the case law in *French* v. *Hay*, 22 Wall. 250 (U.S. 1875), and *Dietzsch* v. *Huidekoper*, 103 U.S. 494 (1881).

[3] This "res" exception had been recognized in the pre-1948 cases. See *Taylor* v. *Carryl*, 20 How. 583 (U.S. 1857); *cf. Kline* v. *Burke Construction Co.*, 260 U.S. 226 (1922).

Federal courts. See Reviser's Note to Section 2283;[4] *Commerce Oil Refining Corp.* v. *Miner*, 303 F.2d 125, 127 (1st Cir. 1962); *Hayes Industries, Inc.* v. *Caribbean Sales Associates, Inc.*, 387 F.2d 498, 501 (1st Cir. 1968).[5]

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[4] The text of the Reviser's Note to § 2283 is as follows:

"An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

"The phrase 'in aid of its jurisdiction' was added to conform to section 1651 of this title [see n. 2, above] and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

"The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

"Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision.

"Changes were made in phraseology."

[5] Professor Moore was consultant to the revisers, and his testimony on the section related to the addition of the third exception, injunctions necessary to "protect or effectuate" Federal court judgments. He stated: "Section 2283 changes the construction which the Supreme Court put upon present 28 U.S.C. Section 379 in *Toucey* v. *New York Life Insurance Company* (1941), 312 U.S. 44 [sic] . . . where the Supreme Court ruled that a Federal court could not enjoin relitigation of a matter in a State court proceeding; in other words, the Federal district court could not protect its judgment." Hearings on H.R. 1600 and H.R. 2055 before Subcommittee No. 1 of the House Committee on the Judiciary, 80th Cong., 1st Sess. (1947), p. 29.

Accordingly, the final Reviser's Note to § 2283 says that with the exception of overruling the specific holding in *Toucey*, the section "restores the basic law as generally understood and interpreted prior to the Toucey decision."

This case presents none of these situations. Neither does the situation here lend itself to a fair application of the text of the statutory exceptions in question. It cannot fairly be said that the injunction against the state court proceedings was necessary to aid the District Court's jurisdiction, or to protect or effectuate any judgment which it had rendered. The only proceeding pending before the District Court was ACL's own suit for an injunction against the same picketing, in which, the day after the suit was filed and two years before the BLE's motion for an injunction against the state court proceedings, the District Court found that the only relief prayed for by the ACL could not be granted by reason of the Norris-LaGuardia Act's ban on injunctions.[6] The suit had then lain dormant for two years until it was revived by the defendant BLE as a purported basis for the injunction against state court proceedings now under review. BLE had never sought any affirmative relief in that suit until it filed the motion for an injunction against the state court proceedings.

It could not conceivably be claimed that the proceedings in the District Court required an injunction against the state court proceedings as necessary to aid them, or as necessary to protect or effectuate any judgment to be entered in the District Court proceedings. The sole relief sought by ACL in the District Court proceeding was an injunction against the picketing. The holding of the District Court on the temporary injunction application was

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[6] Our position does not rest on whether the fact that the District Court had no power to grant the only remedy against BLE prayed for by the ACL's complaint means that the District Court had no "jurisdiction" in the sense of § 2283 that an injunction against the state court proceedings was necessary to aid. *Cf. Avco Corp.* v. *Aero Lodge No. 735*, 390 U.S. 557 (1968).

that such an injunction could not be granted, by reason of the Norris-LaGuardia Act.†

The fact that the District Court held that it was without power to grant an injunction by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar injunction sought before the state courts in order to aid its jurisdiction or to protect or effectuate its judgments. For the Norris-LaGuardia Act was intended essentially as a limitation on the Federal equity power—the power of the Federal courts to grant injunctions. The Act "explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220. "The bill does not take one iota of jurisdiction . . . from the State courts and does not change any State law." Remarks of Representative LaGuardia, 75 Cong. Rec. 5478 (1932).

The central point is, then, that the ruling of the District Court to the effect that ACL could not obtain a Federal injunctive remedy in this matter is complete in and of itself. It does not affront the District Court's jurisdiction for a state court then to exercise its jurisdiction; nor does such an exercise by a state court in any way interfere with any judgment of the District Court. "If the enjoined state proceeding could not prejudice any otherwise proper disposition of some claim pending in the federal

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† In arguing the case on the temporary injunction application in 1967, respondent's counsel engaged in the following colloquy:

"The Court: You're basing your case solely on the Norris-LaGuardia Act?

"Mr. Milledge [attorney for BLE]: Right. I think at this point of the argument, since Norris-LaGuardia is clearly in point here." (A. 63)

suit, the injunction cannot be in aid of invoked federal jurisdiction." *Muscarelle, Inc.* v. *Central Iron Mfg. Co.*, 328 F.2d 791, 794 (3d Cir. 1964).[8] See also *Red Rock Cola Co.* v. *Red Rock Bottlers, Inc.*, 195 F.2d 406 (5th Cir. 1952).

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[8] For reasons similar to those cited in *Richman Brothers*, 348 U.S., at 517, *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954), is not controlling. Under the facts of that case, the provision for interim remedies in Federal court vested in the National Labor Relations Board by § 10(*l*) of the Labor-Management Relations Act was found to be a sufficient authorization for the Board to obtain an injunction against proceedings in the state court by private parties where the Board had filed a § 10(*l*) complaint in the district court. The Court found the second exception ("necessary in aid of its jurisdiction") applicable; decision might also have turned on the first exception, since § 10(*l*) expressly authorizes a district court to grant such injunctive relief "as it deems just and proper, notwithstanding any other provision of law." See the discussion in *Richman Brothers, supra*, at 517, which so suggests; see *Studebaker Corp.* v. *Gittlin*, 360 F.2d 692, 696-97 (2d Cir. 1966), so analyzing *Capital Service*. In *Capital Service* the Board was seeking a limited injunction under § 10(*l*), which would permit certain aspects of the picketing. The employer, who had proffered the unfair labor practice charges with the Board, then proceeded in state court to seek and obtain a much broader injunction completely prohibiting the picketing in question.

Capital Service is clearly distinguishable on any of a variety of grounds. In the first place, there is no administrative regulatory regime here with exclusive jurisdiction to enforce the Railway Labor Act. In the second place, the plaintiff here, unlike the plaintiff in *Capital Service* (the NLRB), does not have any right to an injunction from the District Court, let alone any right to formulate an administrative decree, both of which might be entitled to protection from a contrary state court judgment. Indeed, the plaintiff here, the ACL, was held by the District Court to be barred from obtaining *any* injunctive relief against the picketing by reason of the Norris-LaGuardia Act. In the third place, there is no statute here like § 10(*l*) which could be said expressly to authorize the injunction. Fourthly, it was shortly afterwards held in *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957), that § 2283 does not apply in a suit by the United States. Finally, it is clear, as we develop below, pp. 40-42, that there can be no conflict between the decision of the District Court in denying the 1967 injunction and any action taken by the state court.

BLE has urged that the April 26, 1967, order of the District Court constituted a full and complete, and presumably exclusive, determination of the legal rights of the parties to the suit, not simply a decision based on the Norris-LaGuardia Act, and has argued from this premise that an injunction against a subsequent state court injunction would, on this account, be justified by the second and third exceptions in Section 2283.

In the first place, this contention clearly overstates the effect of the District Court's order of April 26, 1967. BLE's argument simply cites the District Court's conclusions of law (A. 66-68) out of context. A full reading of those conclusions of law makes it plain that the court's ultimate holding is that the Norris-LaGuardia Act bars the requested injunction. The subsidiary conclusions as to the right of self-help having matured as between the direct parties to the FEC-BLE dispute simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction. These reasons were given by the District Court to distinguish the "accommodation" cases which indicate that where the Railway Labor Act's processes are still available between the parties—as they were no longer between FEC and BLE—the Norris-LaGuardia Act does not bar an injunction. See, *e.g.*, *Brotherhood of Railroad Trainmen* v. *Chicago River & I.R. Co.*, 353 U.S. 30, 40 (1957). See *Brotherhood of Locomotive Engineers* v. *Baltimore & O.R. Co.*, 372 U.S. 284 (1963).

Indeed, the controlling authority cited by the District Court in this connection in its April 26, 1967, order was this Court's four-to-four affirmance, 385 U.S. 20 (1966), of the Fifth Circuit's ruling that the Norris-LaGuardia Act barred a Federal injunction against the picketing at

the Jacksonville Terminal. *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966).[9] But that decision made it plain, indeed "emphasized," that in a decision turning on the Norris-LaGuardia Act the sole effect of the court's action is to pass on the "enjoinability" of the defendants' activity "and not . . . its legality for any other purpose." *Id.*, at 653. It is therefore completely without foundation to suggest that the District Court's April 26, 1967, order somehow amounts to a complete and exclusive declaration of the rights of ACL and BLE, furnishing a predicate for an injunction against state court proceedings under the exceptions for injunctions "necessary in aid of" the District Court's jurisdiction or "necessary . . . to protect or effectuate its judgments."

The fact that the District Court's order turned on the Norris-LaGuardia Act is not the only reason why it cannot be claimed to be a final determination of all the substantive

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[9] As indicated above (p. 12, n. 8), each of the cases cited by the District Court, except one cited for a very general proposition, turns on the Norris-LaGuardia Act.

The District Court also cited § 20 of the Clayton Act (A. 67), and this citation has been seized upon by the BLE as establishing that the District Court's order in effect amounted to a declaration of the parties' substantive rights. The second paragraph of § 20 does contain a provision that certain acts enumerated in that paragraph shall not "be considered or held to be violations of any law of the United States." However, the first paragraph of the section, which is broader in scope, is a simple anti-injunction provision, a distant forebear of the Norris-LaGuardia Act. The District Court's order does not indicate whether it is relying on the first paragraph or the second paragraph of § 20. However, the two cases cited in conclusion 7, *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast R. Co.*, *supra*, and *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, *supra*, are both simply anti-injunction cases; this makes it evident that the reference to § 20 of the Clayton Act simply was for the proposition that the respondents' conduct was not subject to Federal court injunction.

legal rights of the parties. The District Court in 1967, in denying ACL a temporary injunction, could not and did not purport to define the ultimate Federal legal rights of the parties. Even apart from the Norris-LaGuardia Act, no definition of those rights could come short of a final hearing on permanent relief. "[A]n application for an interlocutory injunction does not involve a final determination of the merits. . . ." *Public Service Comm'n* v. *Wisconsin Tel. Co.*, 289 U.S. 67, 70 (1933). See also *Industrial Bank of Washington* v. *Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968); *Benson Hotel Corp.* v. *Woods*, 168 F.2d 694, 696 (8th Cir. 1948); *Sinclair Refining Co.* v. *Midland Oil Co.*, 55 F.2d 42, 45 (4th Cir. 1932) ("The granting of the temporary injunction does not determine the rights of the parties. . . ."). The District Court's April 26, 1967, order could not have been one which was "on the merits" or which "determined the rights of the parties." All that it was was an order denying temporary, interim relief.

In the second place, even if the District Court's order could somehow amount to a final adjudication of the parties' rights under Federal law, it could not be said to have constituted any adjudication of their rights under *state* law. The complaint in the Federal court filed by ACL was based solely on Federal law. Conversely, the complaint in the state court action was based solely on state law. Even if the Federal court's April 26, 1967, order amounted to an adjudication as to the parties' rights and duties under Federal law, it did not amount or purport to amount to an adjudication of what their rights and duties might be under state law. Thus, this case cannot even be claimed fairly to fall within the scope of the 1948 revision referred to in the Reviser's Note as overruling the *Toucey* case in situations of relitigation of a case fully tried. See nn. 4 and 5, p. 34, *supra*.

The case presented here is not one of relitigation of a claim for money damages on a note or for breach of contract, for example, as to which there is but a single governing law. Contrast *Toucey* v. *New York Life Ins. Co., supra,* specifically overruled in the 1948 revision (p. 34, *supra*). It is not a case of a state-court relitigation of "the same cause of action" adjudicated in Federal court. See *Toucey* v. *New York Life Ins. Co., supra,* 314 U.S., at 142 (dissenting opinion). Rather, it is one in which there are claims both of violation of Federal and of state-created rights, as to which separate injunctive remedies were sought; an injunction to enforce the Federal rights was sought in Federal court and one to enforce the state-created rights was sought in state court. What the District Court enjoined here was not relitigation of a unitary case which had been fully tried before it but the pursuit of separate remedies in the state court for the vindication of rights having a separate origin. To be sure, the injunction was entered in the name of the conclusion that Federal law precluded or preempted enforcement of those state-created rights.[10] But that is simply to say that the

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[10] The principal authority relied upon by the District Court for the applicability of the third exception to § 2283 was *United Industrial Workers* v. *Board of Trustees of Galveston Wharves,* 400 F.2d 320 (5th Cir. 1968), *cert. denied,* 395 U.S. 905 (1969). There, the Court of Appeals held it proper for a district court to enjoin the enforcement of a state court injunction which prohibited primary picketing by a union subject to the Railway Labor Act where extensive proceedings respecting the dispute had already been had in Federal court and injunctive orders there entered in favor of the party seeking the injunction against the state court proceedings. The court there held (400 F.2d, at 331-34) that such an injunction was appropriate under the exception to § 2283 which permits injunctions where necessary to protect or effectuate the judgments of a district court. But the specific reason for this holding was that the District Court had previously issued a mandatory injunction, under § 6 of the Railway Labor Act, requiring management, which had refused to bargain with the

District Court here adjudicated a so-called preemption defense through the injunctive proceedings. As we have demonstrated above, pp. 24-32, that is what the decisions of this Court teach may not be done.

C. *Even if Adjudication of a Preemption Defense by way of Injunction against State Court Proceedings were within the Competence of the District Court, the State Court's Distinction of the Jacksonville Terminal Case was Well Taken and its Action Should not have been Enjoined by the District Court*

The effect of the grant of the motion of the BLE seeking an injunction against the state court proceedings is simply to make an injunction proceeding in the Federal court serve as substitute for the normal appellate procedures, including review by this Court, with respect to a judgment in the state court. Indeed, the only authority cited by the Court of Appeals was this Court's decision in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), a decision which arose on certiorari to the state courts and which has nothing whatsoever to do with Section 2283 or the exceptional circumstances under which a lower

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union in the manner required by §6 of the Act, to proceed so to bargain. The Court of Appeals concluded that the District Court's mandatory order requiring the parties to bargain as required by § 6 could be frustrated by the pendency of a state court injunction which limited the parties' rights of self-help if the bargaining proved inconclusive. See 400 F.2d, at 331.

Here, there is no order of the District Court requiring the parties to this suit to take any action with respect to each other. Indeed, the only affirmative order ever entered by the District Court in this matter was its order enjoining proceedings in the state court. It cannot remotely be said that the injunction against the state court proceedings granted by the District Court is necessary to protect or effectuate any other order or judgment which that court has entered. To say that the injunction was necessary to effectuate any judgment of the District Court is simply to lift oneself by one's bootstraps.

Federal court may enjoin proceedings in a state court.[1] It is plain that the Court of Appeals took the view that despite the anti-injunction statute, it was at liberty to determine the correctness of the state court's order in the injunction proceedings in Federal court, and by its citation of the *Jacksonville Terminal* case, it indicated that it believed that the state court acted erroneously and that, accordingly, its judgment was properly enjoined. This is precisely what this Court's decision in *Richman Brothers* teaches may not be done. See part A, pp. 24-32, *supra*.

As we have demonstrated above, there is no basis for the Federal courts to consider a preemption defense or other Federal defense against state court proceedings, however well founded, through the extraordinary remedy of an injunction against the state court proceedings. However, even if there were, the state court had a well-founded basis for distinguishing the *Jacksonville Terminal* decision; that decision does not establish that the BLE had a valid defense in the state court proceedings.

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[1] If the theory of the courts below—that an injunction against state court proceedings issued by a Federal court can be made to serve as a substitute for the normal processes of appeal and certiorari in a labor preemption case, at least after a district court has refused, by reason of the Norris-LaGuardia Act, to enjoin the labor conduct in question—is correct, it was hardly necessary in the *Jacksonville Terminal* case itself for the brotherhoods to have pursued their remedies through the state courts and to this Court on certiorari. Since in that very case a Federal court injunction against the Jacksonville Terminal picketing had been held barred by the Norris-LaGuardia Act, *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966), *aff'd, by an equally divided Court*, 385 U.S. 20 (1966), the same legal theory that is advanced here would have supported the District Court, upon receipt of the mandate of the Court of Appeals' holding the Federal injunction barred by reason of the Norris-LaGuardia Act, in enjoining the proceedings relating to the Jacksonville Terminal in the state court.

In the *Jacksonville Terminal* case, this Court held that a state court injunction against picketing of the jointly-owned Jacksonville Terminal facility was improper. The sharply-divided Court stressed the joint ownership of the Terminal Company facility by the struck FEC together with the other carriers (394 U.S., at 372) and the unusual nature of the joint venture agreement providing for the joint management of the facility by the FEC and the other carriers (394 U.S., at 373 n. 5). The fact that the Terminal Company provided various services necessary to the FEC's operations, including switching, signaling, track maintenance, and repairs on its cars and engines, was emphasized. (394 U.S., at 373) The Court concluded, as had the Fifth Circuit in the case involving the Federal court injunction against picketing of the Jacksonville Terminal, that "despite the legal separateness of the Terminal Company's entity and operation, it cannot be disputed that the facilities and services provided by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC. . . ." (*Ibid.*)

In analyzing the legal issues and drawing upon an analogy to the situation prevailing under the National Labor Relations Act, the Court observed that if the "common situs" rules developed under that Act were applied to the situation at the Jacksonville Terminal property, "considering, for example, the FEC's substantial regular business activities on the terminal premises, FEC's relationship with respondent [the Terminal Company] and the other railroads using the premises, the mixed use in fact of the purportedly separate entrances [for employees of the various carriers], and the terminal's characteristics which made it impossible for the pickets to single out and address only those secondary employees engaged in work con-

nected with FEC's ordinary operations on the premises—the state injunction might well be found to forbid petitioners [the unions] from engaging in conduct protected by the National Labor Relations Act." 394 U.S., at 389-90.

In the case of the Moncrief Yard, no such situation is presented. The Moncrief Yard is not part of the Jacksonville Terminal common facilities; while at one point it adjoins the Jacksonville Terminal properties, the functions performed in the two locations are completely different and the factors of common operation and use, so heavily relied upon by the Court in *Jacksonville Terminal*, are completely lacking as to the Moncrief Yard. The Moncrief Yard is owned solely by the Seaboard Coast Line Railroad. FEC neither exercises nor participates in the exercise of any managerial discretion at the yard. No SCL employees engaged in work connected with the FEC's operations work there. The yard performs no services for the FEC. No FEC cars or engines are repaired or serviced there.

Moncrief Yard is not a mere interchange facility serving and controlled by a group of carriers. The primary purpose of Moncrief Yard is the classification of ACL rail traffic in no way connected with the FEC. The only relationship that the yard has with the FEC is "pick-up and delivery": FEC employees bring cars to the premises on a designated track, which cars are left to be picked up by SCL employees and included as part of SCL's ongoing train movements and vice versa, SCL employees cut out from their trains cars which will be handled southbound along the east coast of Florida by the FEC, to be picked up by FEC employees.[2] That interchange is re-

[2] Respondents have repeatedly claimed that Moncrief Yard "is an integral and necessary part of FEC's operations" and that the District Court's order of April 26, 1967, so held. This is not the

quired by Federal law and mandated by an existing Federal court injunction. Interstate Commerce Act, 49 U.S.C. §§ 1(4), 1(11), 1(15), 1(17) and 3(4); *Florida East Coast R. Co.* v. *Jacksonville Terminal Co., et al.*, U.S.D.C., M.D. Fla., No. 63-16-Civ-J, Order of January 30, 1963. At the point when ACL employees refused to move rail cars in Moncrief Yard, the cars were legally and factually "owned" and controlled by ACL; FEC had nothing more to do with them.

The nature of the picketing itself in this case is, moreover, quite different from that at Jacksonville Terminal. There, FEC employees reported for work at the facility, using a variety of rail, road and foot entrances. FEC employees were regularly within the premises on a full-time basis. Moreover, service work was done by others for the FEC on the premises. Here, FEC employees do not report for work or leave work at Moncrief Yard. They enter it by rail on switching engines, staying long enough only to drop off or pick up cars or, in certain cases, to wait for a new cut of cars to pick up after dropping one off. The picketing here was directed solely at the ACL employees, primarily when they reported for work; indeed, it appears that telephone calls were made during the night to ACL employees at home. The picketing was not confined to the

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case. All that that order found was that "*The use of ACL's Moncrief Yard by FEC to receive and deliver freight* is an integral and necessary part of FEC's operations." (A. 66, emphasis supplied.) There is a considerable difference. The holding simply means that FEC needs to interchange with carriers whose lines extend beyond Florida in order to carry on its business and that this interchange is in fact performed by the FEC dropping off and picking up cars at Moncrief Yard. The finding is not to the effect that Moncrief Yard is a place devoted to serving or doing the work of FEC, as this Court apparently held to be the case of the Jacksonville Terminal facilities in the *Jacksonville Terminal* case. 394 U.S., at 373.

places where the interchange was effected or restricted to times when FEC employees were on the premises. Rather, the picketing was the delivery of a general message to ACL employees to treat cars which had originated on, or were destined to, the FEC as "hot cars," and not to handle them. See *Brown Transport Corp.* v. *NLRB*, 334 F.2d 30 (5th Cir. 1964); *NLRB* v. *Carpenters District Council of Kansas City*, 383 F.2d 89 (8th Cir. 1967).[3]

Thus, to take as analogy the cases decided under the Labor-Management Relations Act, the picketing was not primary, as the Court in *Jacksonville Terminal* apparently deemed the picketing there to be at least in part. There was here no "attempt to minimize the effect of [the] picketing . . . on the operations of the neutral employers utilizing" the yard. See *Electrical Workers, Local 761* v. *NLRB*, 366 U.S. 667, 678 (1961). The picketing was not restricted to a place, not on the primary employer's premises, which was in effect a continuation of his premises, as the Court may have deemed the Jacksonville Terminal to be, nor one where "the picketing employees made no attempt to interfere with any of the [connecting] railroad's operations for" persons other than the FEC. See *United Steelworkers* v. *NLRB*, 376 U.S. 492, 499 (1964). The message, rather, of the picketing was to treat FEC-originated or FEC-destined cars as "hot cars," at least within the limits of the yard, which had the inevitable effect of blocking operations in the yard.

On this basis, the decision of the Florida circuit judge that the decision in *Jacksonville Terminal* was distinguish-

[3] The cited cases are LMRA cases which hold that in the case of deliveries by the struck employer to a neutral site, picketing is unlawfully secondary if it takes place out of the presence of the employees of the struck employer. See particularly the *Carpenters* case, 383 F.2d, at 94.

able from the case before him (A. 181-82) was clearly a decision for which there was a substantial basis.—We are not aware of the dimensions of the exception to Section 2283 which the respondents are attempting to suggest in this case. It may be that their point is that there is an exception to Section 2283 where a state court decision refusing to honor a preemption or preclusion defense is so lacking in substance as to suggest the absence of good faith, or where the question of preemption is so clear as not to be "arguable," as they put it. (Br. Op., p. 13) Perhaps their point is that in this sort of situation, the frictions that Section 2283 was designed to prevent, and the statute's policy of avoiding premature review of state court decisions and of having those decisions reviewed in a uniform way by this Court, could somehow be deemed to be secondary.—We observe in passing that in *Richman Brothers*, where Section 2283 was held controlling, it was perfectly plain that state court action against the picketing in question was prohibited by Federal law; this Court had expressly so held a week before in a decision acknowledged to be controlling.—However, if the "arguability" of the conclusion that state law is not preempted is to be the test, we believe it plain that the state circuit court here acted on the basis of a substantial distinction between the facts here and the facts in *Jacksonville Terminal*.[4] If the state Circuit Court opinion was so manifestly incorrect, one wonders

[4] In opposing certiorari, the BLE found it necessary to characterize the state court judge as displaying "complete intransigence" and as wilfully continuing his injunction "in the face of what even he termed the 'final conclusion' of this Court." See Br. Op., p. 10. A reference to the state court judge's letter opinion makes it plain that he is referring to the "final conclusion" of this Court as to the Jacksonville Terminal situation, not as to the situation before him (A. 181), and that his opinion simply makes a conscientious distinction of the Jacksonville Terminal case on its facts from the situation prevailing at the Moncrief Yard.

why the BLE has not pursued its state court remedies. As of this writing, more than six months have passed without the BLE lifting a finger to have the Circuit Court enter a final judgment, as that court has agreed it would, from which an appeal could be prosecuted to the Florida District Court of Appeal. If the case is not a clear one of patent error by the Circuit Court, there is, of course, that much more reason for not permitting the District Court to act as an appellate tribunal over the state court proceedings.

Even if the rule that the respondents are suggesting is that on one basis or another the ruling of the Florida Circuit Court was reviewable in plenary fashion in the Federal District Court, it is, we submit, still the case that the Circuit Court's judgment was right and that the decision of this court in the *Jacksonville Terminal* case does not protect the picketing at bar in the Moncrief Yard situation.

This Court has twice held that FEC employees could picket the Jacksonville Terminal, which this Court characterized as a "common situs" and joint facility of FEC and the other carriers. 394 U.S., at 389-90. Curiously enough, the unions have not exercised this privilege and now seek to move north to picket a totally separate and innocent carrier at a location which can hardly be called a "common situs" or joint facility. That picketing appears to have proceeded on a "hot car" basis, aimed not at picketing the interchange, but at treating cars which originate on or are destined for the FEC as "hot." Neither Federal law nor any established Federal labor policy or decision of this Court dictates that this sort of picketing be free from restraint under state law. The assertion that it does means that any railway labor dispute which has matured to the point of self-help as between the parties may form the

basis for an escalation of their economic conflict to involve innocent third-party carriers without apparent geographic limit. For if the Moncrief Yard can be tied up because cars which originated on or are destined for the FEC come there, other classification yards throughout the country through which those cars successively move could receive similar treatment. Once picketing is held permissible at a facility, like Moncrief Yard, which is not a joint terminal facility involving the struck carrier, simply because cars originated on or destined for the struck carrier are handled there, this "hot car" theory can be applied to any yard facility in the country. Indeed, so long as the picketing is done by rail unions (see p. 56, *infra*), there seems to be no reason in theory why the shippers and receivers of the "hot cars" could not also be picketed.

Even as applied to a joint terminal facility situation, the divided Court in the *Jacksonville Terminal* decision candidly characterized the result it reached as "unsatisfactory." 394 U.S., at 392. The Moncrief picketing by contrast does not involve the judiciary in the task of unraveling the problems of what sort of picketing might be permitted in a situation involving continual presence of the primary, struck employer at a "common situs", a task which the Court declined to undertake in *Jacksonville Terminal.* See *id.*, at 388-90.

Here, no FEC employees reported for work at the Moncrief Yard. All that FEC employees did at the Yard was to "pick up and deliver" cars after reporting for work elsewhere and after arriving at Moncrief by way of switching movements. All the picketing and messages involved here were directed to the employees of the neutral employer, the ACL. While it may not be possible to draw "bright lines" between primary activity and secon-

dary activity in all cases (394 U.S., at 388), we suggest that a bright enough line can be drawn between primary picketing or picketing at a joint terminal facility, on the one hand, and picketing of neutral employees at a neutral carrier's yard on a "hot car" basis, on the other. Indeed, these lines would be considerably less stringent on the unions than those drawn under the LMRA with respect to union secondary conduct at premises primarily used by a neutral employer. See *Brown Transport Corp.* v. *NLRB, supra; NLRB* v. *Carpenters District Council of Kansas City, supra.* We suggest that no overriding principle of Federal law precludes the states from applying their general laws with respect to the protection of neutral businessmen from secondary picketing to a situation involving the picketing of a neutral carrier's classification yard.

For the conclusion to be reached that there is a Federal inhibition against any interference with picketing as far removed from the normal processes of self-help by one disputant against the other as that presented here would be to stretch the facts of *Jacksonville Terminal* well beyond their breaking point. Certainly, the general language of the Court at the conclusion of its opinion in *Jacksonville Terminal,* 394 U.S., at 392-93, so often cited by the respondents in favor of a general *carte blanche* to engage in any and all activities against third parties, must be read in the light of the specific facts presented, and extensively recited by this Court, in the *Jacksonville Terminal* case.

Thus, we submit it is one thing to say that state law rights and remedies are precluded in the case of direct self-help by one party to a railway labor dispute against another or in the case of the use of self-help at jointly-owned and controlled facilities participated in by one of

the parties to the dispute. It is quite another to say that states are without power—in the absence of any Federal statute providing or denying a remedy—to apply state law, designed generally for the protection of the property of their citizens, to limit the use of self-help weapons against a third party rail carrier at a yard on its own line simply because certain cars which are deemed by the union to be "hot" cars are handled at that yard.

Accordingly, even if it were somehow appropriate—despite Section 2283 and the *Richman Brothers* decision construing it—for the District Court to pass on the question whether there was a substantive basis for the state court injunction given this Court's decision in *Jacksonville Terminal*, the answer is that the state court did have a substantial basis for distinguishing the cases. While we submit that the difference in the facts recited above establishes a difference in legal treatment, certainly the question is substantial enough to forbid the District Court from engrafting another exception upon Section 2283 by short-circuiting the normal appellate review procedures with respect to the state court's order.

D. *If the Jacksonville Terminal Decision is Applicable to the Facts Presented by the Picketing at Moncrief Yard Here, that Decision Should Be Overruled*

We have contended that the present proceeding is no place to adjudicate the question whether this Court's decision in *Jacksonville Terminal* is governing with respect to the picketing at the Moncrief Yard. Our position is that that determination is one for the state courts in the first instance—including the state appellate courts, to which the BLE has full access if it cares to use it—and then for this Court upon certiorari. However, as set forth in part C, above, if this suit is an appropriate place to make

that determination, we urge that the Florida Circuit Court was correct in holding that the cases as to the Terminal and as to Moncrief Yard were distinguishable. If the Court does not agree with us that Section 2283 bars the use of a proceeding in the Federal district court to determine the applicability of the *Jacksonville Terminal* decision to this case, and if the Court views the language at the close of the opinion in *Jacksonville Terminal*: "Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription" (394 U.S., at 393), to be a general proposition applicable without limit, we would urge this Court to overrule that decision.[1] —Of course, this Court need not reach this question if it agrees with us that the anti-injunction statute bars the interposition of the preemption defense by way of injunction against the state court proceedings.

The Court in *Jacksonville Terminal* was narrowly divided, and the four to three majority candidly announced that its result did not amount to a "really satisfactory judicial solution to the problem at hand." (394 U.S., at 392) We submit that it is among the least satisfactory of the solutions.

In the first place, the holding in *Jacksonville Terminal*, to the effect that the state courts may not apply state law to curb secondary picketing by railway labor unions against neutral third party carriers, amounts to a preemption of state law even though there is no governing Federal statute; even though there is no Federal administrative agency whose regulatory regime must be saved from interference by the state courts; and, finally, even

[1] We reserved this question in our petition for certiorari, p. 32, n. 16.

though this Court declines to create a Federal common law, based upon statutory analogy, to fill the void.

The Court's approach in *Jacksonville Terminal* violates what the Court on previous occasions had held to be the fundamental principle derived from its decisions:

> ". . . [F]ederal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142 (1963).

Indeed, the modern approach of this Court is that interstitial regulation by the states of interstate commerce and of interstate carriers is permissible where the specific subject matter is not taken in hand by a generally applicable Federal statute, or by a Federal administrative regime. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R. I. & P. R. Co.,* 393 U.S. 129, 144 (1968); *Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.,* 372 U.S. 714, 722-25 (1963); *California* v. *Zook,* 336 U.S. 725, 728 (1949); *Rice* v. *Chicago Board of Trade,* 331 U.S. 247, 255 (1947); *Parker* v. *Brown,* 317 U.S. 341, 368 (1943). Thus, Federal law should not be held to supersede state law "'unless that was the clear and manifest purpose of Congress.'" *Florida Lime & Avocado Growers, Inc.* v. *Paul, supra,* 373 U.S., at 146, quoting from *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947).

While in industrial disputes generally, state law regulating secondary boycotts has generally been held to be pre-empted by the Labor Management Relations Act, the decisions of this Court make it plain that the basic reason is the avoidance of collision between the state courts and

the administrative regime of the NLRB. See *Garner* v. *Teamsters Local 776,* 346 U.S. 485, 490-91 (1953); *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 242, 244-45 (1959); *Liner* v. *Jafco, Inc.,* 375 U.S. 301, 306-07 (1964); *Vaca* v. *Sipes,* 386 U.S. 171, 180-81 (1967). But as this Court has held in the *Jacksonville Terminal* case (394 U.S., at 375-77), there is no Federal administrative jurisdiction to deal with the question raised by the application of secondary pressure to neutral rail carriers by the disputants in a Railway Labor Act dispute. Thus there is no possibility of a collision of regimes.

Nor is the railway secondary boycott taken in hand and protected by Federal statute. As this Court also indicated in *Jacksonville Terminal,* there is no affirmative sanction in the Railway Labor Act for any specific form of self-help by a party to a Railway Labor dispute, let alone the exercise of self-help weapons against neutral rail carriers. (394 U.S., at 380) While some right of self-help might be deemed to be implicit in the statutory scheme, the question posed is not whether a state may prevent the parties to a railway labor dispute from exercising any self-help weapons, but whether a state may confine the use of those weapons to the immediate parties to the dispute.

Not only is there no express Federal statute which begins to indicate that the policy of Congress is that the states may not do so, but there have been repeated enactments by Congress indicating that the secondary boycott in American industry generally is contrary to Congressional policy. Indeed, it appears that this policy is as old as the original Section 20 of the Clayton Act. See the discussion at 51 Cong. Rec. 9652, 9653, 9658 (1914), indicating that that provision was not intended to legalize the secondary boycott. In any event, in the Labor Management Relations

Act of 1947, Congress firmly set the national labor policy against secondary boycotts. See Section 8(b)(4)(A) of the Act, as explained in *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 357 U.S. 93, 100 (1958). As Senator Taft said on the floor of Congress:

> "In this bill we prohibit secondary boycotts all over this country." 93 Cong. Rec. 7537 (1947)

The legislative history is clear that the only reason why the practice was not outlawed on the railroads was that the railroads had been governed by the Railway Labor Act and there had never been any history of secondary boycotts on the railroads. See the remarks of Senator Taft at 93 Cong. Rec. 6498 (1947). Indeed, in 1959, in the Landrum-Griffin Act, Congress plugged a further loophole by allowing railroads to seek relief under the Labor Management Relations Act against unlawful secondary picketing by *non-rail* employees. Section 704, Pub. L. 86-257, 73 Stat. 542. See *NLRB* v. *Servette, Inc.*, 377 U.S. 46, 51-52 (1964); *United Steelworkers* v. *NLRB*, 376 U.S. 492, 500-01 (1964).

Thus, there is no evidence that Congress views the application of secondary pressures against neutral businessmen as an important national economic goal to be fostered. Congress, rather, has repeatedly set the face of Federal legislation against any such practice. "[I]t was the clear and unequivocal intention of Congress in 1947 to outlaw the evils of secondary boycotts . . . ." (105 Cong. Rec. 15531 (1959) (remarks of Representative Griffin)) If anything, Congress has been more restrictive in dealing with the self-help rights of railway workers than in less essential industries; this is implicit in the whole structure of the Railway Labor Act which imposes lengthy procedures before any rights of self-help at all mature, and which denies self-

help altogether as to certain matters. See *Jacksonville Terminal, supra,* 394 U.S., at 378; *Railway Clerks* v. *Florida E. C. R. Co.,* 384 U.S. 238, 246 (1966); *Detroit & T. S. L. R. Co.* v. *United Transportation Union,* No. 29, O.T. 1969, decided December 9, 1969, 38 U.S.L.W., at 4035. It accordingly is without foundation to assume that there is any Congressional sanction whatsoever for the use of secondary boycotts against neutral rail carriers in railway labor disputes.

Prior to the *Jacksonville Terminal* decision, the Railway Labor Act had been held to supersede state law only when enforcement of the state law would conflict with an express provision of the Federal Act. See *California* v. *Taylor,* 353 U.S. 553 (1957); *Cf. Missouri Pac. R. Co.* v. *Norwood,* 283 U.S. 249, 258 (1931); *Terminal R. Ass'n* v. *Brotherhood of Railroad Trainmen,* 318 U.S. 1 (1943). Not only would application of state law here not conflict with any express provision of the Act, but it would not conflict with any provision of Federal decisional law, this Court having expressly refused in the *Jacksonville Terminal* case to lay down any rules, derived from statutory analogies or otherwise, as to what secondary pressures on neutral rail carriers should be held unlawful as a matter of Federal law. 394 U.S., at 390-92.

Thus, the case is of a nature, under the usual rules—there being no paramount Federal statute designed to protect the conduct, nor any Federal administrative regime designed to regulate it—where state law would be permitted to function. While the danger of inconsistent regulation by the states exists as a theoretical matter and was referred to by this Court in *Jacksonville Terminal* (394 U.S., at 381), if the problem is properly conceived of not as to whether the states may prohibit any form of self-help, but as

to whether they may curb the use of self-help weapons applied directly against neutral employees, the danger of inconsistent regulation as a practical matter is minimized. The use of the secondary boycott has had scant support as a proper means of conducting labor management relations in the past two decades. Not only have a series of Congressional enactments been aimed at it, but prohibition of it has been the consistent course of legislation and adjudication in the states.[2] Moreover, inconsistency of state regulation, under the modern decisions of this Court, has been held a basis for invalidating state regulation of interstate carriers only where the inconsistency itself imposes a burden on interstate commerce. See *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520, 526-30 (1959); *Southern Pac. Co.* v. *Arizona*, 325 U.S. 761, 779-84 (1945). Here, if Florida were to outlaw secondary picketing of neutral rail carriers' rail yards and other states were to permit it, the inconsistency would not impose a burden on interstate commerce. The closing of the regulatory gap revealed by the *Jacksonville Terminal* case can hardly be called a subject where the "needs of the subject matter manifestly call for uniformity." *Machinists* v. *Central Air Lines, Inc.*, 372 U.S. 682, 691-92 (1963). Should the possibility of inconsistent state regulation become more than theoretical, Congress could of course always act.

Thus, neither any affirmative Federal policy, Federal administrative regime, or real danger of embarrassing

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[2] See, *e.g.*, Ariz. Rev. Stat. § 23-1323; Colo. Rev. Stat. § 80-4-6(2)(h); Haw. Rev. Stat. § 377-7(7); Idaho Code § 44-801; Iowa Code Ann. § 736B.1; Kan. Stat. Ann. § 44-809(a); Mass. Gen. Laws Ann., Chapter 149 § 20C(f); Minn. Stat. Ann. § 179.43; Neb. Rev. Stat. § 48-903; N.D. Code § 34-12-03(2)(e); *W. E. Anderson Sons Co.* v. *Local Union No. 311*, 156 Ohio 541, 104 N.E.2d 22 (1952); Ore. Rev. Stat. § 662.230; Penn. Stat. Ann., Title 43, § 211.6(2)(d); Tex. Civil Stat., Art. 5154f; Utah Code, § 34-1-8 (2)(e); Wis. Stat. Ann. § 111.06(2)(g).

inconsistent state regulation stands in the way of permitting state law to be applied to curb the use of self-help weapons against neutral rail carriers in railway labor disputes.—The main practical consequences of this Court's holding in *Jacksonville Terminal* are twofold. First, the decision puts in the hands of railway labor the power to use weapons against neutrals which are without counterpart in all of American industry. Second, the decision produces an almost unique regulatory gap. Because of this Court's holding in the Federal case involving the Jacksonville Terminal, *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen,* 385 U.S. 20 (1966), it is established that the Norris-LaGuardia Act bars the Federal courts from acting. It is plain that no Federal administrative agency has jurisdiction. If the state courts may not apply state law in the case of such secondary pressures, the consequence is that there is no tribunal, judicial or administrative, Federal or state, which can curb the escalation of self-help weapons by the parties to a railway labor dispute against neutral third-party rail carriers. And this would be the conclusion despite the fact that the consistent course of Federal and state legislation has been against the use of the secondary boycott.

In the light of these consequences of the holding in *Jacksonville Terminal,* and of the questionable basis for its conclusion as to the preemption of state law, we suggest that that decision should be reconsidered and overruled, if the Court reaches this point.—Of course, our basic point is that Section 2283 provides that this case is not one in which the availability of a preemption defense to the proceedings in the state court may be adjudicated at all, and we have also contended that even if it were, the *Jacksonville Terminal* decision is distinguishable.

II. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED THE NORRIS-LAGUARDIA ACT

Despite the fact that the District Court and the Court of Appeals ignored the point, it appears plain that the District Court's injunction is violative of the Norris-La Guardia Act's ban on injunctions. The District Court held that ACL's injunctive remedy against the picketing involved a case "arising out of a labor dispute" and hence fell within the Norris-LaGuardia Act's ban on injunctions. It must follow equally that the counter-injunction entered by the District Court against enforcement of the state court proceedings, which is based upon the same set of operative facts, likewise involves a case "arising out of a labor dispute." Moreover, the specifics of the injunction granted fall within the letter and the spirit of that Act.

In the first place, Section 4(d) of the Act absolutely prohibits injunctions against any person who is "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State." See Appendix A, p. 1a, *infra*. The briefest of references to the District Court's injunction (A. 196) makes it plain that this is precisely what the District Court has done. We submit it is untenable to argue, as respondents do (Br. Op., p. 20), that Section 4(d) prohibits an injunction against persons aiding the ACL in its attempts to obtain a state court remedy but does not prevent an injunction against the prosecution of that state court remedy. Moreover, on its face, the District Court's injunction prohibits not only the enforcement of state court remedies but collective and concerted action in enforcement of them. (A. 196)

Secondly, Section 7 of that Act makes it plain that no Federal court has power to issue *any* injunction "in any

case involving or growing out of a labor dispute" except upon strict compliance with certain procedures and the making of certain findings, including a finding, certainly pertinent here, "[t]hat complainant has no adequate remedy at law." Clearly the availability of the normal appellate remedies to the BLE in the Florida state courts and in this Court would preclude the making of any such finding; and, indeed, there was not even any pretense in the District Court of making *any* findings in accordance with Section 7 of the Act. The BLE has contended that Section 7 is not applicable here because the conduct enjoined by the District Court was not conduct of a sort protected against injunction by Section 4 of the Act. (Br. Op., p. 20) This contention is erroneous. In the first place, the two sections are independent prohibitions; an injunction is barred if it violates either of them. *Local 205, United Electrical Workers* v. *General Elec. Co.*, 233 F.2d 85, 90 (1st Cir. 1956), *aff'd on other grounds*, 353 U.S. 547 (1957); *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886, 919 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963). *Cf. Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 458 (1957). In the second place, as we have indicated above, Section 4(d) was in fact violated by the injunction.

The only argument that appears to be seriously made against the applicability of the Norris-LaGuardia Act here appears to be the general argument that the Norris-La Guardia Act does not apply to injunctions against management as opposed to those against labor. (Br. Op., pp. 20-22) The text of the Act does not support any such proposition. Section 7 restricts *all* injunctions in cases "involving or growing out of a labor dispute." One of the specific items of conduct protected against injunction by Section 4 is conduct of which only management is capable—becoming a member of an "employer organization." Section 4(b).

The only judicial support for the sweeping proposition that the Act does not apply to management is apparently a dictum in *Brotherhood of Locomotive Engineers* v. *Baltimore & O. R. Co.*, 310 F.2d 513, 518 (7th Cir. 1962). Where this Court has upheld the grant of an injunction against management despite the Norris-LaGuardia Act, by reason of the necessity in a specific case of accommodating that Act to other statutes, it has taken pains to avoid any such sweeping proposition. See, *e.g.*, *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 457-59 (1957).[1]

The Act does not prohibit injunctions simply against labor or simply against management; it denies the courts of the United States jurisdiction, subject to certain exceptions, to issue any injunction "in any case involving or growing out of a labor dispute." While, to be sure, the occasion of the passage of the Norris-LaGuardia Act was the use, deemed excessive by the Congress, of Federal court injunctions to curb union activities, the anti-injunction provisions of the Act on their face apply equally to labor and to management, and the legislative history indicates that Congress intended the provisions to apply to injunctions against both labor and management.

The Senate Committee Report is plain enough:

> "Moreover, it will be observed that this section [Sec. 6], as do most all of the other prohibitive sections of the bill, applies both to organizations of labor and organizations of capital. The same rule throughout the bill, whenever it is applicable, applies both to employers

[1] It is worth noting that Mr. Justice Frankfurter, who was a student of the labor injunction problem prior to the passage of the Norris-LaGuardia Act, and who was intimately associated with the drafting and passage of that Act, took the view that the Act was applicable to bar injunctions against management. See *Textile Workers Union* v. *Lincoln Mills*, *supra*, 353 U.S. 448, 469 n. 3 (dissenting opinion).

and employees, and also to organizations of employers and employees." S. Rep. 163, 72d Cong., 1st Sess. (1932), p. 19.

In the course of his remarks explaining the bill to the Senate, Senator Norris said:

> "Wherever it can be done this bill applies equally to organizations of labor and to organizations of capital. Organizations of employees and organizations of capital are treated exactly the same." 75 Cong. Rec. 4507 (1932).
>
> "It attempts to weigh in the scales of justice all the elements which ought to be considered in passing upon controversies between labor and capital. It asks for the laboring man nothing that it does not concede to the corporation." 75 Cong. Rec. 4509 (1932).

Senator Wagner, who was also one of the major supporters of the bill, said during the course of debate:

> "The policy and purpose which give meaning to the present legislation is its implicit declaration that the Government shall occupy a neutral position, lending its extraordinary power neither to those who would have labor unorganized nor to those who would organize it and limiting its action to the preservation of order and the restraint of fraud." 75 Cong. Rec. 4915 (1932).

At one point during the debate there was a discussion as to whether the anti-injunction provisions of the bill could cut both ways. Senator Steiwer, a labor advocate, argued that one fault of the bill was that it would also prevent labor from enforcing its rights. Senator Norris agreed that Senator Steiwer had raised a troublesome question, and Senator Reed said:

> "I think it is only fair to give warning now that this is a 2-edged sword. . . ." 75 Cong. Rec. 4938 (1932).

The basic purpose, then, of the Act was a neutral purpose, even though the Act might have been prompted by the practice of issuance of injunctions against union conduct. That purpose was "to take the Federal courts out of the business of granting injunctions in labor disputes". *Wilson & Co.* v. *Birl*, 105 F.2d 948, 953 (3d Cir. 1939); see also *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 372 (1960).

The more carefully reasoned lower court opinions support this view. The Court of Appeals for the First Circuit has declared: "The Norris-LaGuardia Act is not a 'one-way street'.... Where its terms can be read to include employer conduct, that conduct should also be protected." *Local 205, United Electrical Workers* v. *General Elec. Co.*, 233 F.2d 85, 93 (1st Cir. 1956), *aff'd on other grounds*, 353 U.S. 547 (1957). Other decisions in the lower Federal courts have held injunctions against management conduct barred by the Norris-LaGuardia Act. See *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F.2d 183 (4th Cir. 1948); *Newspaper Guild* v. *Boston Herald-Traveller Corp.*, 140 F. Supp. 759 (D. Mass. 1955). See also *Local 937, United Automobile Workers* v. *Royal Typewriter Co.*, 88 F. Supp. 669 (D. Conn. 1949); *Duris* v. *Phelps Dodge Copper Products Corp.*, 87 F. Supp. 229 (D.N.J. 1949); *United Packing House Workers* v. *Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill. 1948).

Accordingly, if the Norris-LaGuardia Act prohibits a Federal court injunction against the picketing here (as the District Court held), it should, for the reasons stated, prohibit a Federal court injunction against the proceedings in the state court.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be reversed, and the case remanded to the District Court with instructions to deny the respondents' motion for an injunction against the proceedings in the Florida Circuit Court.

Respectfully submitted,

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APPENDIX A

The Norris-LaGuardia Act

The text of Sections 4, 7 and 13 of the Norris-LaGuardia Act, 47 Stat. 70, (1932), 29 U.S.C. §§ 104, 107 and 103 is as follows:

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

* * * * *

"SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's

fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be renderd in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

* * * * *

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined)

of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."